



South Carolina House of Representatives

# Legislative Update

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Robert J. Sheheen, Speaker of the House

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## House Week in Review

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With the mandatory adjournment date in sight, the House began wrap up work last week on the session's money bills. A conference committee of Reps. McLellan, Carnell and Winstead and Sens. Waddell, Moore and Setzler started the task of working out the differences between the House and Senate versions of H.4800, the State Appropriations bill; H.4801, Supplemental Appropriations bill; and H.4802, the Capital Reserve Fund bill.

### Conference Committees

Anticipating that the budget conference committee would have information to report back to the House early in the last week of the session, House members agreed to return to Columbia Monday at 2 p.m. to be available for any conference committee reports.

H.4360, the illegal drug forfeiture bill, also was sent to conference committee last week. Conferees for this drug legislation are Reps. Hayes, Nettles and Huff. Senate members are Sens. Holland, Stilwell and Bryan.

### Solid Waste and 25 Year Retirement

A House vote Tuesday to recommit S.1182 to the House Ways and Means Committee probably put an end to the solid waste and recycling discussion for this session. Set for special order, the House had spend close to two weeks in intermittent debate over S.1182 before voting 53-41 to recommit the bill to the Ways and Means Committee.

House concurrence on Wednesday meant the enactment of another significant bill, however. By a vote of 116-7, the House agreed to the Senate's amendments to H.3609, the 25 Year Retirement bill. The legislation was then enrolled for ratification.

But the House refused to go along with Senate changes to S.1240, a state agency sunset bill, to which the Senate had attached an amendment stipulating who would have access to reapportionment information next year. The House's refusal to go along with the Senate changes will send this bill to a conference committee.

Ratified or Enrolled for Ratification

With mandatory adjournment just around the corner, an increasing number of bills are being ratified or enrolled for ratification. Among the bills ratified last week are S.1403, which will make revisions in the state probate code; and S.1165, an act which will set out the parameters by which tests for sexually transmitted diseases may be disclosed to law enforcement.

Enrolled for ratification was H.3104, which would allow voters 65-years-old or older to vote by absentee ballot; and H.4578, which further defines and clarifies the handling of public records.

Other House Action

By a vote of 51-31, the House sustained the veto by Gov. Campbell of H.3100, which would have required a quick release mechanism on any burglar bars placed on a private or rental dwelling.

And finally, on Wednesday by acclamation, the General Assembly elected Duane Shuler of Williamsburg County to an at-large circuit court position replacing the retired Judge James M. Morris.

Legislation Passed This Session

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With only three days left in the 1990 session, here are summaries of many of the significant bills that have been passed by the General Assembly this session. Not all acts that have been ratified or signed into law appear here. Only the most important bills, or bills receiving public or media attention, have been listed. For better reference, the new laws have been arranged in categories.

ABORTION

Parental Consent for Abortion

**H.3122, signed into law February 29, 1990.**

This bill defines the requirements that must be followed before an abortion could be performed on a minor.

Under this legislation, no abortion could be performed on a girl under the age of 17 unless one of the following three criteria is met:

1. The attending or referring physician has received the informed, written, signed and witnessed consent of the minor and
  - one of the minor's parents, or
  - a legal guardian of the minor, or
  - a grandparent of the minor, or
  - any person who has been standing in loco parentis (in the place of the parent) to the minor for at least 60 days. Under this law, in loco parentis means any person over 18-years-old who has placed his or herself in the position of the legal parent by assuming obligations which are incidental to the parental relationship.

Any person who consents to an abortion under the in loco parentis provision, must sign an affidavit indicating the nature and length of his or her relationship with the minor. To knowingly falsify this statement would be a misdemeanor carrying a fine of not more than \$3,000 or not more than a year in jail. The new law will require the affidavit to state the penalties for false information.

2. The attending physician receives the informed, written, signed consent of a minor who is emancipated. Under this act, an emancipated minor is one who has been married or has by court order been freed from the care, custody and control of her parents.
3. The attending physician has obtained the informed, written and signed consent of a minor and has received a court order obtained by the minor allowing the abortion.

Under this new law, if a minor has a baby after a parent or legal guardian refuses to give the informed written consent for the minor's abortion, and there has been a judicial finding of the refusal of consent, then the minor, the natural father and the refusing parent or legal guardian are legally responsible for the support of the baby until the minor reaches 18-years-old or is emancipated.

#### Judicial By-Pass

The act gives every minor girl the right to petition the court for an order granting her the right to consent to abortion on her own behalf without meeting one of the three criteria listed above. This is known as judicial by-pass.

In order to obtain this court order, the girl would file a "Jane Doe" petition with either the Circuit or Family Court. The Adoption and Birth Parents Services division of the state Department of Social Services must provide assistance in preparing and filing the petition, if requested. The act requires the division to file the petition on behalf of the minor within 48 hours of the request.

Once the petition is filed, the court will appoint a guardian ad litem for the girl. The minor petitioning the court will be advised she may participate in the court proceedings on her own behalf; however, she also will be advised she has the right to legal representation and that a lawyer will be appointed to represent her, if she requests it.

Within 72 hours of the petition being filed, the court will hold a hearing on the matter. This time could be extended if requested by the petitioning minor. In evaluating whether the minor should be granted the right to consent to an abortion on her own behalf, the court would evaluate the girl's emotional development, maturity, intellect and understanding; the nature and possible consequences of the abortion and the alternatives available, and whether the abortion is in the best interest of the minor.

In issuing the order, the court could:

- Grant the minor the right to consent on her own behalf to an abortion if the court finds she is mature and well-informed enough to make the abortion decision on her own;
- Grant the consent for abortion if the court finds that the performance of an abortion is in the girl's best interest;
- Deny the petition if the court finds that the minor is immature and that performance of the abortion is not in the girl's best interest. If the father of the unborn child is identified during the court proceeding, then he will share in the expense of delivering and rearing the child as determined by the court. The court also will specify that the girl will have the right to counseling, prenatal care, delivery, neo-natal and post-partum care, the cost of which may be paid by the state.

The minor has the right to appeal the court decision to the state Supreme Court. The notice of intent to appeal must be filed within 72 orders of the lower court issuing its decision. The appeal would be anonymous and take precedence over other matters before the Supreme Court. The minor will not have to pay the cost of this appeal if she declares she cannot afford it.

### Penalties

Any person performing an abortion on a minor, knowing that the procedure would violate provisions of this act or would recklessly disregard these provisions, would be guilty of a misdemeanor, carrying a fine of \$2,000 to \$10,000 and/or not more than three years in jail. The act stipulates no part of the minimum fine can be suspended. For a third or subsequent offense, the sentence would be jail time for not less than 60 days nor more than three years, none of which can be suspended.

### Information Distribution

Any doctor counseling a minor on the question of abortion must inform her of the procedures she must follow to obtain an abortion without the consent required by this act.

The Adoption and Birth Parent Services division will develop and distribute a brochure to health and education professionals for use in counseling pregnant girls. The brochure will outline how to get in touch with her local health department for prenatal care; how to get in touch with the Adoption and Birth Parent division or any private, non-profit adoption service; the parental consent requirements of the new law; the judicial by-pass procedure, and how to get in touch with her local mental health clinic for counseling.

When any abortion is performed, the doctor must file a report with the state Department of Health and Environmental Control within seven days. The name of the patient must not be reported. However, the report must state who gave permission for the abortion or the circumstances for waiving the consent requirements.

### Emergency Situations

State law requires that a pregnant woman must give consent before any abortion is performed and that special consent provisions be followed in the case of girls under the age of 17. If the woman is not mentally competent, consent may be given by her spouse or legal guardian if married, or a parent or legal guardian if not married.

Consent must be waived, however, if a doctor determines that a medical emergency exists involving the life of, or grave physical injury to, the pregnant woman, or if the pregnancy is a result of incest. In cases of incest, the doctor performing the abortion must report the alleged incest to the local county Department of Social Services or to a local law enforcement agency. Failure to make the report is a violation punishable under the state's child abuse laws. However, none of these provisions permits a doctor to perform an abortion without first obtaining the permission of the pregnant woman if she is capable of giving consent.

CIVIL RIGHTS

Public Accommodations and Discrimination

**S.1157, signed into law April 25, 1990.**

The first article of this bill provides for equal enjoyment and privileges to public accommodations without discrimination or segregation on the basis of race, color, religion or national origin.

Establishments defined in the bill are those places of public accommodation that the discrimination or segregation action would be "supported by state action." "Supported by state action" would be considered the licensing or permitting of any establishment or agent of the establishment by a state or local government. Establishments falling under this bill include any inn, hotel, motel or other establishment that provides lodging to transient guests. This excludes any establishment which has five rooms or less for rent, which also is occupied by the owner as his residence.

Also included is any restaurant, cafeteria, lunchroom, lunch counter, soda fountain or other facility engaged in selling food for consumption on the premises; hospital clinics or other overnight medical facility, any wholesale or retail establishment, any movie house, theater, concert hall, billiard parlor, saloon, barroom, golf course, sports arena, stadium or other places of amusement.

The bill specifically excludes from these provisions "private clubs or other establishments not in fact open to the general public." The legislation excludes from the definition of private any club or facility which offers memberships for less than 30 days. The bill prohibits anyone from denying the rights of public accommodation; intimidating or threatening anyone in an attempt to interfere with the use of accommodations, or punishing anyone for using this right.

Under Article 3 of this bill, the Attorney General would notify SLED to investigate any pattern or practice of discrimination prohibited by this legislation when a complaint is received. The results of the investigation would be reported to the State Human Affairs Commission. The commission would establish a three-member panel of commissioners to determine whether there is reasonable cause to believe there is sufficient facts to state a violation of this article. The Attorney General then must file an action with the Human Affairs Commission. The panel established by the commission to hear the action must not be the same panel that received the results of the SLED investigation.



The five-member panel, which would have the power to issue subpoena, will conduct a hearing within 60 days. If it is determined that the rights and privileges established by these provisions have been violated, the panel will grant relief in the form of immediate license revocation.

Any person or group charged in the complaint would have a right to an attorney and to produce evidence. All testimony would be given under oath. Any vote of the panel on the complaint would be made in executive session.

Permits and licenses could not be taken away from an owner due to the actions of an employee unless the discriminatory practice was known, open and notorious. In addition, the panel could not revoke a permit or license, even if discrimination is found, if:

- the panel concludes the establishment is one of public necessity and revoking its permit would be severely detrimental to the community;
- the panel concludes that the discrimination is limited to one segment of the establishment's operation. The permits or licenses for that segment only would be revoked;
- the panel concludes the discriminatory conduct is limited to one person or group of people whose permits and licenses could be revoked.

The final decision of the panel would be in writing and must list the licenses or permits to be revoked. The determination of the panel could not be appealed to the full commission and is the final administrative review. Upon the panel's findings, the Attorney General must notify the appropriate state agencies to revoke the license or permits. If the license or permit is revoked, the owner may not apply for another for three years.

In addition, violations of Article 1 would be a misdemeanor punishable by a fine of not more than \$2,000 and/or imprisonment for less than a year. In addition, the aggrieved party may take action of his or her own in the circuit courts to recover damages due to violation of Article 1 of this bill. The amount of damages would be a minimum of \$5,000. Anyone suffering discrimination must bring a complaint before the State Human Affairs Commission prior to bringing an action in circuit court.

## CONSUMER

### Civil Remedy for Bad Checks

**H.3844, signed into law February 20, 1990.**

Under this legislation, merchants would have a civil remedy at their disposal, as well as the current criminal penalties available, for the writing of bad checks. Those who pass bad checks and do not make them good within 30 days would be liable to the merchant for the value of the bad check plus damages of \$500 or three times the amount of the check, whichever is the lesser amount. In a legal action under this provision, the jury or court may waive the treble damages if it finds that the person failed to make good on the check because he recently lost a job, had a personal or family illness, or a personal or family catastrophic loss. The merchant must make a written demand for payment of the check, threatening to sue for treble damages if the check is not made good, and send the notice by certified mail. A defense against this complaint is that the defendant paid the amount of the check before the action began; the bank made an error; or the merchant knew the check was not good when he accepted it.

## EDUCATION

### Hugo Make-Up School Days

**H.4190, signed into law February 21, 1990.**

Under this legislation, schools that missed 10 or more days as a result of the hurricane will have five days waived by the district school board.

For schools that missed less than 10 days as a result of the hurricane, the district school board may waive up to half of the days missed. Under this provision, the board may not waive more than five days for any school.

For those missed days that the school board is not authorized to waive under this joint resolution, the board may request the State Board of Education to waive additional days "upon good cause showing that the particular school cannot make the days up without undue hardship."

Staff development and teacher work days could be waived by the district trustee board to provide make up days, under this resolution.

**Fingerprinting Educators**

**S.1198, signed into law April 3, 1990.**

With this bill enacted into law, all persons applying for initial certification with the State Department of Education will undergo a state fingerprint review conducted by SLED and the FBI. The FBI fee will be paid by the applicant. The cost to SLED, the State Department of Education or any other state agency involved would be paid by the state. The first year cost to the state is estimated at \$101,175; for subsequent years, \$96,175.

**Early Intervention for Handicapped Preschoolers**

**S.567, signed into law February 20, 1990.**

This legislation follows up on last year's proviso in the 1989-90 Appropriation Act directing the State Department of Education to provide for early intervention for preschool-age handicapped children. The bill directs other state agencies to provide the Education Department with any information available to help estimate needs and costs of the early intervention program, although the legislation does not commit any additional funding than what is already available.

**ENVIRONMENTAL**

**SUPERB Fund**

**H.4807, signed into law May 9, 1990.**

Of great interest to a number of small businessmen around the state who own underground gas tanks, this bill makes changes to the State Underground Petroleum Environmental Response Bank (SUPERB) bill.

Provisions of the bill include:

- An initial registration fee of \$100 per tank and an annual renewal fee of \$100 per tank until December 31, 1998 when the fee would be reduced to \$25 per tank.

- An additional one-half cent a gallon environmental impact fee with the proceeds going to the SUPERB account. In addition, a one-fourth cent a gallon inspection fee would be established. The environmental impact fee would be collected by the State Department of Agriculture but transferred to DHEC. The amount used for administration of the program may not be more than \$450,000 a year.
- The one-half cent environmental impact fee would be suspended any time the SUPERB account exceeds \$15 million. The fee suspension would continue until the account drops below \$5 million.
- The bill would substantially decrease the amount of financial responsibility tank owners must carry. The bill states the owners must maintain financial liability in the lesser amount required by the federal government or in the amount of \$25,000 for corrective action or clean up of spills, \$25,000 for third party property damage, and \$25,000 for third party bodily injury per occurrence with an annual aggregate of \$25,000. Current financial responsibility requires the owner to carry coverage of \$100,000 for clean up or corrective action, \$300,000 for third party property damage an occurrence with a \$300,000 annual aggregate.
- The financial responsibility required by the bill, along with the SUPERB account, may be used by tank owners to demonstrate their compliance with federal financial responsibility requirements.
- The bill spells out what the SUPERB account is to be used for, including to pay the costs of site rehabilitation by owners or operators who qualify for reimbursement or direct billing. DHEC also may use the fund to clean up a site which does not qualify for reimbursement, direct billing or any site which does not qualify but the owner is unwilling or unable to undertake the rehabilitation. The bill directs DHEC to "diligently pursue" recovery of any sum from the owner or operator or the federal government, unless the amount is too small or the likelihood of success too uncertain.
- The provisions of this section would not apply to any site where the owner of the underground gas tank has not paid the required registration fee.
- The bill also notes that if liability insurance or another financial responsibility mechanism providing coverage for sudden or nonsudden leaks has been executed for a underground tank site, then this coverage must be exhausted before funds from the SUPERB Account may be used.

**Clean Indoor Air and Promotion of Public Health Act**

**S.138, signed into law May 30, 1990.**

The purpose of this bill is to allow non-smokers to be free from exposure to tobacco smoke while in public indoor places.

Under this legislation, it would be unlawful to smoke or possess lighted smoking material in any form in

- Public schools, preschools and day care centers;
- Health care facilities, including acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, nursing homes, tuberculosis hospitals, kidney disease treatment centers, ambulatory surgical facilities, rehabilitation facilities, and residential treatment facilities for children and teenagers;
- Government buildings;
- Elevators;
- Public transportation vehicles; and
- Arenas and auditoriums of public theaters and art centers.

However, there are a number of exceptions. These include:

- Smoking would be permitted in enclosed teacher lounges and private offices in public schools, preschools and day care centers.
- In government buildings, smoking would be allowed in enclosed private offices and designated employee break areas. Smoking policies for the Statehouse and legislative office buildings would be determined by the office or body which has authority over that area of the building.
- Smoking would be permitted in taxicabs.
- In art centers or public theaters, smoking areas could be designated in foyers, lobbies or common areas. However, where smoking is permitted, managers would post signs designating smoking and non-smoking areas. In addition, the management would "make every effort" to keep the smoking area from impinging on the smoke-free areas.

Violation of these provisions would be a misdemeanor carrying a fine between \$10 and \$25. The bill specifically states that no authorization is given to require any person to submit to tests to determine whether nicotine or other tobacco residue is present.

## GOVERNMENT OPERATIONS

### Local Option Sales Tax

**H.3739, signed into law February 2, 1990.**

After three years of debate, the General Assembly passed a local option sales tax. Legislation authorizing the local option sales tax, H.3739, passed both houses of the General Assembly during the 1989 Session, but differences between the versions of the bill passed by the House and Senate were not resolved until January 11 of the 1990 session. This section summarizes H.3739 and provides examples of the potential impact of the legislation.

### Implementation and Rescission of the Tax

The bill authorizes counties to levy a sales tax of 1%, if a majority of the qualified electors approve the levy in a referendum. The referendum to impose the local option sales tax must be conducted on the second Tuesday in November to assure maximum voter participation. While the referendum is binding, county councils may call for another referendum on the local option sales tax if the tax is not approved at the initial referendum. Another referendum may not, however, be held more often than once in 12 months and, like the initial referendum, must be held on the second Tuesday in November.

The bill also provides for a referendum to rescind the local option sales tax after it is imposed. A rescission referendum must be held if the governing body of the county is presented with a petition containing the signatures of 15% of the qualified electors of the county. However, a rescission referendum may not be held until the local option sales tax has been levied for at least two years in the county. After the rescission referendum, another referendum to rescind or reimpose the local option sales tax may not be held for two years. Like referendums to impose the tax, rescission referendums must be held on the second Tuesday in November.

If a county approves the local option sales tax, the tax is levied throughout the county. Even though the tax is approved in November, it may not be imposed prior to July 1st following the referendum. With the passage of the bill during the 1990 session, the earliest imposition of the the tax in a county would be July 1, 1991. Implementation of the tax statewide would generate around \$300 million.

### Distribution of Revenue to County Areas

The Tax Commission administers and collects the local option sales tax and remits the taxes to the State Treasurer, who credits the revenues to a "Local Sales and Use Tax Fund." Only county areas which have implemented the local option sales tax will receive revenue from the fund. Each county area's distribution from the fund depends upon the amount of revenue generated from the local option sales tax within the county area.

For county areas generating \$2.0 million or more but less than \$5.0 million, the distribution equals the revenue generated within the county area. For county areas with collections of less than \$2.0 million, the distribution includes the revenue generated by the county area plus a supplement. County areas with collections of \$5.0 million or more receive the revenue collected within the county area minus funds withheld to provide the supplement for county areas with less than \$2.0 million in collections.

The size of the supplement and the amount of funds withheld from county areas is determined by the percentage of local option sales tax revenue generated statewide by county areas collecting \$5.0 million or more from the 1% sales tax.

When county areas collecting \$5.0 million or more from the 1% sales tax generate 50% or less of the total statewide collections, the State Treasurer is directed to withhold 5% of their revenue. The funds withheld are then distributed to county areas with less than \$2.0 million in collections on a population basis. Each county area to be supplemented receives an amount equal to the percentage which its population bears to the total population of all county areas generating less than \$2.0 million from the tax multiplied by the amount of funds withheld.

If county areas collecting \$5.0 million or more generate more than 50% of the total statewide collections of the tax, the State Treasurer establishes the percentage at a level to provide each county area with collections below \$2.0 million with a supplement to bring the county area up to \$2.0 million. In no event may the percentage set by the State Treasurer exceed 5%.

In the discussion above, the county areas which will receive a supplement have been identified as those with collections of less than \$2.0 million. The \$2.0 million figure, however, applies only to the first distribution of revenue from the "Local Sales and Use Tax Fund." After the first distribution, the \$2.0 million figure will be increased by the same percentage as the Education Improvement Act Fund increases.

The distributions to all county areas are reduced to cover not more than \$750,000 in administrative costs of the Tax Commission.

County/Municipal Revenue Fund and Property Tax Credit Fund

The "Local Sales and Use Tax Fund" is divided into two funds: One is a "County/Municipal Revenue Fund" while the second fund is a "Property Tax Credit Fund."

Revenue from the local option sales tax is to be allocated between these two funds as follows:

- (1) during first year after effective date of act:
  - (a) 63% to Property Tax Credit Fund
  - (b) 37% to County/Municipal Revenue Fund
- (2) during second year after effective date of act:
  - (a) 65% to Property Tax Credit Fund
  - (b) 35% to County/Municipal Revenue Fund
- (3) during third year after effective date of act:
  - (a) 67% to Property Tax Credit Fund
  - (b) 33% to County/Municipal Revenue Fund
- (4) during fourth year after effective date of act:
  - (a) 69% to Property Tax Credit Fund
  - (b) 31% to County/Municipal Revenue Fund
- (5) during fifth year after effective date of act and thereafter:
  - (a) 71% to Property Tax Credit Fund
  - (b) 29% to County/Municipal Revenue Fund

Funds in the "County/Municipal Revenue Fund" may be used by counties and municipalities in the same manner as revenue generated from property taxes (e.g., to pay the operating costs of providing services such as law enforcement, fire protection, solid waste collection and disposal, and libraries). Fifty percent (50%) of the "County/Municipal Revenue Fund" is distributed among the county and the municipalities within the county on the basis of the location of the sale generating the tax and 50% on the basis of population.

Funds allocated to the "Property Tax Credit Fund" are to be used to alleviate the burden of property taxes within the county area. The bill accomplishes property tax relief by giving each taxpayer a credit against the appraised or fair market value of his property. The credit is actually a percentage of the property's fair market value. The percentage used to calculate the credit is the same percentage that revenue received by the county or municipality from the "Property Tax Credit Fund" is of the total fair market value of all taxable property in the county or municipality.



The credit reduces the fair market value of property before assessment ratios are applied. As a result, property with lower assessment ratios, such as residential and agricultural property, receive more tax relief, while property with higher assessment ratios, such as manufacturing concerns, receive less benefit. In other words, a residence with a fair market value of \$100,000 receives a greater reduction in property taxes than does a manufacturing concern with the same fair market value.

The bill distributes 67% of the "Property Tax Credit Fund" to the county and 33% to the municipalities within the county. The 33% distributed to the municipalities is then divided among the municipalities on the basis of the municipalities' population.

### **25 Year Retirement**

**H.3609, enrolled for ratification May 30, 1990.**

In a compromise worked out among various business, education and employee groups, this legislation would:

- Allow early retirement at age 55 with at least 25 years of service;
- Require a 4 percent per year penalty for each year below 30 years of service;
- Prohibit any cost-of-living increases granted until the employee, taking early retirement, reaches age 60 or would have had 30 years of service;
- Eliminate any employer-paid health insurance until the employee, taking early retirement, reaches age 60 or would have had 30 years of service. An employee who elects early retirement will be eligible for health insurance by paying the total premium cost until age 60 or 30 years of service.

### **Patriot's Point Assistance**

**S.699, signed into law March 19, 1990.**

The purpose of this bill is to get the financially beleaguered Patriot's Point Development Authority back on its financial feet. Highlights of the legislation include:

- The current 9-member board would be abolished and replaced by a 5-member board. Three of the new board members would be appointed by the governor; two others would be gubernatorial appointees recommended by the House Speaker and Ways and Means Committee chairman for one, and the Senate President Pro Tempore and the Senate Finance Committee chairman for the other. Of the current authority board, six are appointed by their resident congressman, two by the state's U.S. Senators and one by the governor.
- The board's power to issue bonds would be eliminated. However, with the approval of the State Budget and Control Board, the board could borrow money and make and issue negotiable notes.
- \$6 million would be transferred by the Budget and Control Board to the Patriot's Point Authority from an economic development fund of the S.C. Coordinating Council for Economic Development. The transfer would be a three-year interest free loan. The \$6 million loan, together with \$4 million in authority assets frozen by the federal Bankruptcy Court, would allow the authority to participate in any court-approved settlement in connection with the collapsed development of a hotel and marina complex. The loan also could be used to assist the authority with operating expenses.
- By Jan. 1, 1994, the authority must report back to the General Assembly and the governor a detailed status report of development activities at the attraction, the financial condition of the authority, and recommendations for legislation to assure the permanent status of the Patriot's Point Naval and Maritime Museum.
- None of these provisions will take effect until all claims and litigation brought against the Patriot's Point Development Authority, in connection with the hotel and marina development, have been settled or disposed of to the satisfaction of the governor and the Budget and Control Board, as evidenced by written resolution by the board. At that time, the terms of the current authority members will expire, and the new members will take office.

**Maximum Compensation for State-paid Doctors**

**S.668, signed into law February 21, 1990.**

This legislation would address the compensation paid to doctors or other employees at the state's two medical schools. The legislation would require that the maximum compensation of any medical school doctor or staff person be approved in advance annually by the president of the medical school or the board of trustees.

The bill specifically states that a doctor or medical school employee may not approved his own compensation. The compensation approved for the doctor or staff must include all compensation, including that received through a professional service organization, if the remuneration is obtained through the use of state-owned facilities or equipment.

**Advisory Commission on Elimination of Wasteful State Govt Spending**

**S.1405, enrolled for ratification May 31, 1990.**

This 18-member commission made up of private sector and taxpayer representatives would study the ways and means to eliminate wasteful state government spending. Specifically, it would address the problems of duplication of services and the feasibility of consolidating state services. The report would be due one year after appointment of the commission; the commission would then disperse. The governor and General Assembly would share the appointment powers to the commission; however, no state elected officials or members of state boards or commissions could serve.

**INSURANCE**

**Health Insurance Fiscal Impact Statement**

**S.1331, signed into law April 24, 1990.**

Under this legislation, any bill or resolution coming before the General Assembly mandating or offering a health coverage by an insurance company, health service contractor or HMO, must have a fiscal impact statement attached to it. This impact statement would be developed by the Division of Research and Statistical Services and signed by the Chief Insurance Commissioner or his designee.

The impact statement would address:

- To what extent the coverage would increase or decrease the cost of treatment or services;
- To what extent it would increase or decrease the use of treatment or services;
- To what extent would the mandated treatment or service substitute for more expensive treatment or service;
- To what extent the coverage would increase or decrease the administrative expenses of the insurance companies and the premium and administrative expenses of policyholders; and
- To what would the impact of the coverage be on the total cost of health care.

#### LAW ENFORCEMENT

##### Obscene Bumper Stickers

**H.3053, signed into law April 24, 1990.**

This act would prohibit any person from operating a motor vehicle in South Carolina which has visibly attached to it a sticker, decal, emblem or other device containing obscene or indecent words, photographs or depictions.

The definition of indecent in connection with this legislation includes:

- "Taken as a whole, it describes, in a patently offensive way, as determined by contemporary community standards, sexual acts, excretory functions, or parts of the human body, and
- "Taken as a whole, it lacks serious literary, artistic, political or scientific value."

The legislation refers to the definition of obscene as it appears in the State Code in Section 16-15-305 (B) (C) (D) (E). These sections spell out the state's provisions on obscenity.

Penalty for this misdemeanor is a fine of not more than \$200.

##### DYS and Contraband

**S.1112, signed into law April 25, 1990.**

This legislation would prohibit juveniles in the custody of the Department of Youth Services from possessing certain contraband items defined in the legislation. The bill further would prohibit any person from furnishing or attempting to furnish the contraband articles.

In this legislation, contraband would be defined as any device that could be used as a weapon; drugs of any type for which the juvenile does not possess a legal prescription; poisons or other dangerous chemicals; any flammable liquid; any type of alcohol; keys, locks or any type of tool not officially issued by DYS; and any additional items defined as contraband by the DYS commissioner.

A list of contraband articles would be posted in a conspicuous place on the DYS grounds, under provisions of the bill.

Any adult violating these provisions would be guilty of a felony punishable by a fine between \$1,000 and \$10,000 and/or jailed from one to ten years.

## REAL ESTATE

### Non-Resident Tax Withholding

**S.1065, signed into law April 25, 1990.**

This bill would rewrite the current tax law to better clarify what portion of a real estate sale by a non-resident would be subject to state income taxes. It also better defines those who would be subject to these tax provisions.

Last session, a proviso to the 1989-90 Appropriations Act dealing with the income tax withheld in connection with the real estate transactions of non-residents caused considerable consternation in the real estate industry. S.1065 attempts to better define these tax provisions, while stemming the flow of revenue lost in connection with these property transactions.

Status of Pending Legislation

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Here is a brief rundown on the status of a number of significant bills still pending. The status of this legislation is listed as of Monday, June 4, 1990. Summaries of these bills have appeared previously in the Legislative Update.

In Conference Committee

H.4800	State Appropriations bill
H.4801	Supplemental Appropriations bill
H.4802	Capital Reserve Fund bill
H.3169	Hazardous Waste Limitation bill (Senate adopted free conference report May 31, 1990)
S.1524	Lobbying Revisions
H.4360	Forfeiture Proceeds from Drug Activities

**Passed by the House**

**Beach Management Act Revisions** (S.391, Sen. Waddell) House amendments to this Senate bill eliminated the controversial dead zone but strengthened provisions against seawalls.

**Status:** Passed the House 5-8-90;  
Senate returned bill to the House with amendments 5-31-90.

**State-run Primaries** (H.3088, Rep. Taylor). This bill would authorize the State Election Commission to conduct primary elections instead of political parties. Municipal elections would be excluded. Political parties could continue to conduct presidential preference primaries at their own expense.

**Status:** Passed the House 5-29-89;  
Pending before Senate Judiciary

**Bond Bill from Even to Odd Years** (H.3792, Rep. McLellan). The State Bond Bill would be authorized in odd-numbered, instead of even-numbered, years beginning in 1991, under this bill.

**Status:** Passed the House 5-11-89;  
Pending before Senate Finance

**School Children and Real Estate Ownership** (H.3419, House Education and Public Works Committee). This bill would eliminate the provision in state law that allows a student to attend school in a district where he owns real estate but does not reside. If enacted, the legislation would allow such students to complete the school year before being required to attend public school in his residence district. If the student is to graduate within two school years, he may remain in his current district until he graduates under this bill.

**Status:** Passed the House 4-19-89;  
Pending before Senate Education.

**"Zero-Based" Budget Review** (H.3358, Rep. Corning). This bill would require that 24 state agencies undergo a zero-based budget analysis every eight years. This review would be conducted by the subcommittees of the House Ways and Means and Senate Finance committees. During these hearings, each of the 24 agencies would have to justify all of its recurring expenses for the current fiscal year and any additional funding requested. The subcommittees would then make recommendations on increasing or decreasing agency funding to the full House Ways and Means and Senate Finance committees.

**Status:** Passed the House 5-3-89;  
Pending before Senate Finance.

**Nuclear Waste Consultation Committee** (H.3124, Rep. Keyserling). This House resolution would allow the nine-member state Nuclear Waste Consultation Committee to select its own chairman. Currently, the governor or his designee serves as committee chairman. This proposed provision would go into effect if the governor declines the chairmanship.

**Status:** Passed the House 2-9-89;  
Favorable report from Senate General Committee 4-4-89.

**Safe Schools Act of 1990** (H.4852, Rep. Wilkins). The bill would address a number of crime problems now facing South Carolina schools. The bill addresses increasing penalties for carrying weapons and trafficking drugs on school property, the criminal records of juveniles, and the circumstances under which they can be tried as adults.

Under this bill, the penalty for carrying a weapon on school property would increase from a \$100 to a \$1,000 fine. The jail time also would increase from 30 days to one year. In addition, the bill makes it a separate offense to manufacture, distribute, sell or purchase drugs within a half mile of a public or private school, playground, park, public vocational or trade school, technical education center or public or private college or university. This offense would be punishable by a fine of \$10,000 and/or jail time of up to ten years. If the violation involves crack cocaine, the fine would be no less than \$10,000 and 10 to 15 years in jail.

Further, the bill would allow a juvenile, 15 or older, to be tried as an adult for bringing a weapon on school property or for distributing drugs within a half-mile proximity of a school, playground or park following a full investigation and court hearing.



Under this legislation, the Department of Youth Services would have to provide a public or private school with the criminal record of the juvenile, who has been convicted of a violent crime. Upon the juvenile's release from the department, DYS would provide his criminal record to the principal of the school the juvenile is eligible to attend. Each school district would develop a confidentiality policy regarding the handling of the juvenile's record. The policy would determine who would have access to the information and where the record would be kept. At the minimum, the policy would require the record be kept in the juvenile's confidential disciplinary files and to be destroyed when the youth graduates or reaches 21-years-old.

The legislation also would require the State Department of Education to develop, in conjunction with SLED, a standard school crime reporting form. All incidents reported on the forms would be compiled by the Education Department and published annually as a report to the General Assembly.

Further, the legislation makes it unlawful to threaten the life or family of a teacher or a principal. Punishment for this offense is not more than five years in jail.

**Status:** Passed the House 4-5-90;  
Second reading by the Senate 4-25-90  
Set for special order after being recalled from Senate Education Committee 5-31-90.

**Juveniles and Drug Operations** (H.4574, Rep. Hayes). This legislation would make it illegal to use a person under 17-years-old in an illegal drug operation, nor would it be legal to receive a controlled substance from a juvenile. Violation of these provisions would constitute a felony carrying a sentence of 5 to 15 years.

According to the Attorney General's Office, one way many drug dealers exploit children is by using juveniles to distribute drugs. Such use of children virtually ensures that the child will become a part of the drug dealing criminal element.

**Status:** Passed the House 4-11-90;  
Pending before Senate Judiciary

**Laundering Drug Money** (H.4571, Rep. Hayes). This legislation would make it a felony to knowingly participate in a financial transaction designed to disguise or conceal the proceeds gained through violation of state or federal illegal drug laws.

It also would make it a felony if the transaction was used to promote further illegal drug activities. Further, the legislation makes it a felony to transport, transmit, or transfer a monetary instrument or funds from a place in South Carolina to a place outside the U.S., or to a place in South Carolina from a place out of the country, if the action is taken to promote illegal drug activities or to disguise or conceal the proceeds of illegal drug activities.

This legislation was among those proposals recommended by the Attorney General's Office. According to the office, such a statute, if enacted, would promote the prosecution of white collar criminal who launder money for drug traffickers but who do not get involved in actual drug distribution.

**Status:** Passed the House 4-11-90;  
Pending before Senate Judiciary

**Additional Penalties for Drug Offenses and Machine Gun Use** (H.4573, Rep. Hayes). This legislation would provide additional punishment for a drug related offense if the convicted was in possession of a firearm or visibly displays a firearm or knife in the commission of the crime. The additional punishment, like that for violent crimes, would be five years on top of the sentence for the original offense.

The legislation also provides that if the firearm used in the commission of a violent or drug-related crime is a machine gun or a firearm with a silencer, the additional penalty would be ten years. These additional penalties must run consecutively, not concurrently, if the conviction is drug-related. The convicted would not be eligible for parole, work release or extended work release during the service of the sentence.

**Status:** Passed the House 4-5-90;  
Pending before Senate Judiciary

**Facilitating Drug Activities** (H.4436, Rep. Baker). Under this legislation, confiscation provisions would be expanded to include any conveyance, "including trailers, aircraft, motor vehicles and water going vessels" used or intended for use in connection with illegal drug trafficking.

**Status:** Passed by the House 4-12-90;  
Pending before Senate Judiciary.

**Intimidation of Witnesses or Victims** (H.4575, Rep. Hayes). This legislation would make intimidation of witnesses a crime. It would be a misdemeanor punishable by a \$5,000 fine and/or jail time of not more than five years to prevent or attempt to prevent or dissuade a victim or witness from reporting to law enforcement, from causing an indictment or warrant to be issued, or from causing the arrest of any person.

It would be a felony if a victim or witness is intimidated by a threat of violence on the victim or a third person; where the intimidation is part of a conspiracy; or where the act is committed for money, or by someone convicted of any state or federal crime. This felony is punishable by five years in jail and/or \$10,000. Further, the person convicted of the felony is not eligible for parole, work release or extended work release.

**Status:** Passed the House 4-11-90;  
Pending before Senate Judiciary.

**Infectious Waste Burning Reduction** (H.4246, Rep. McTeer). A significant environmental bill passed by the House, H.4246 would limit the amount of infectious waste that may be burned by commercial waste incinerators.

Under this legislation, DHEC would annually estimate the amount of infectious waste it expects to be generated in South Carolina for the next calendar year. Commercial infectious waste incineration facilities would be prohibited from burning more than one-twelfth of the annual DHEC estimate during any one month. The legislation states that at no time may the amount of waste burned in a month be less than 750 tons.

This limit does not apply to infectious waste treated by hospitals or generation facilities if the waste is generated in-state and incinerated on a non-profit basis.

According to the bill, from July through December 1990, no more than 750 tons of infectious waste may be burned in any one month by a commercial incinerator.

Currently, the state has only one commercial infectious waste incinerator, Southland Exchange Joint Venture in Hampton County. It is estimated that only about 5 percent of the waste burned at Southland is generated in South Carolina. DHEC has estimated that South Carolina generates about 18 tons of infectious waste a day.

**Status:** Passed by the House 3-8-90;  
Senate Medical Affairs Committee report: majority favorable; minority unfavorable.

**Selection of Judges** (H.4168, Rep. M.O. Alexander). This legislation, passed by the House, would make some changes in the provisions governing the selection of judges. Under this legislation, the make-up of the 8-member Judicial Screening Committee would change slightly to include one member of the House and one from the Senate who are not licensed attorneys. Currently, all members of the committee are attorneys. If this legislation is enacted, this provision would not take effect until December 1, 1992.

The legislation also stipulates that if a judicial candidate withdraws or dies, or if the screening committee finds the candidate not qualified, then the election for that judgeship may not be held until additional candidates have a chance to file for the office and undergo the screening process. The bill gives the General Assembly the authority, by concurrent resolution, to reopen the filing period for a particular judgeship and reschedule the election.

The legislation further would prohibit any candidate from being nominated for a judgeship from the floor who has not been reviewed by the Judicial Screening Committee.

**Status:** Passed the House 3-8-90;  
Pending before Senate Judiciary.

**Nine New Circuit Judges** (H.4423, House Judiciary Committee). This House Judiciary Committee bill would add nine additional Circuit Court judges: Four at-large judges and one additional judge from the 5th, 9th, 13th, 14th and 15th Judicial Circuits.

In addition, the legislation states that no judge retired from the State Supreme Court, Court of Appeals, Circuit Court or Family Court may preside over any official circuit or family court proceeding, except in case of an emergency as determined by the Chief Justice of the State Supreme Court. In order to be eligible to be appointed by the Chief Justice to serve in an emergency, the retired judges must be screened by the Joint Legislative Judicial Screening Committee and found by the committee to be qualified to serve in these emergency situations. Screening for a retired Supreme Court justice would be every 10 years on the anniversary of his retirement. Judges retired from the Court of Appeals, Circuit Court or Family Court would be screened every six years on the anniversary of their retirements, in order to serve under emergency circumstances. These duly screened retired judges may be appointed by the Chief Justice to perform judicial duties in the Supreme Court, Court of Appeals, Circuit or Family Courts.

The bill further states that no active Family Court judge may be assigned to preside over any official proceeding in Circuit Court.

**Status:** Passed the House 2-1-90;  
Second reading by the Senate 5-31-90.

**Processing Ethics Complaints** (H.4338, Rep. Waites). This bill would revise the way ethics complaints are handled by the State Ethics Commission, allowing the executive director to make a determination from the written complaint whether there are facts sufficient to allege a violation. In addition, the legislation would allow the existence of the complaint to be made public if the respondent waives confidentiality. The final disposition of the complaint also would become public record.

Currently, the law prohibits the commission from admitting the existence of a complaint or its final disposition, even though the circumstances of the complaint are often leaked to the media.

**Status:** Passed by the House 3-8-90;  
Second reading in the Senate 4-17-90

**Raised Reinstatement Fees for Revoked Driver's License** (H.4283, Rep. Sheheen). This legislation would increase the reinstatement fee for revoked or suspended licenses from \$10 to \$30.

**Status:** Passed the House 3-29-90;  
Second reading in the Senate 5-17-90.

**Above Ground Petroleum Storage** (H.4922, House Medical, Military, Public and Municipal Affairs Committee). This legislation details the requirements for storage of petroleum in above ground storage tanks, and deletes the requirements that the State Fire Marshal set regulations for this storage.

**Status:** Passed the House 4-11-90;  
Second reading in the Senate May 31, 1990.

Pending before the House

**S.981      Drug Free Workplace bill**

Passed the Senate 4-24-90;  
House second reading uncontested calendar.

**H.4981    Strengthening of Building Code bill**

House second reading uncontested calendar

**S.974      Electronic Home Detention**

Passed the Senate 4-5-90;  
House second reading uncontested calendar

**S.1080    Inmate Labor on Public Projects**

Passed the Senate 1-18-90;  
House second reading uncontested calendar.

**H.3796    Pari-Mutuel Sports Act**

House second reading contested calendar.

**S.223      Marital Rape**

Passed the Senate 1-26-89;  
House second reading contested calendar.

**H.3054    Child Education Savings Act**

House second reading contested calendar.

**S.5        Dropouts and Driver's Licenses**

Passed the Senate 4-20-89;  
House second reading contested calendar.

**H.4421    Informed Consent for Abortion**

House second reading contested calendar.

**H.3848    Highway Safety bill**

House second reading contested calendar.